

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Joaquin Wall,)
)
)
 Plaintiff,) Case No.: 2:13-cv-2102-GMN-NJK

HRHH Hotel/Casino, LLC d/b/a Hard Rock Hotel & Casino,

Defendant.

ORDER

Pending before the Court is the case of *Wall v. HRHH Hotel/Casino, LLC*, (2:13-

cv-2192-GMN-NJK). On September 18, 2014, the Court ordered that Defendant show cause as to why this case should not be dismissed for lack of subject matter jurisdiction. (ECF No. 36). On September 26, 2014, Defendant filed a Response. (ECF No. 38). For the reasons stated herein, the Court will remand this case to Clark County District Court.

I. BACKGROUND

This action centers upon allegations that Plaintiff Joaquin Wall suffered severe bodily injury when an inebriated patron jumped onto him while he was swimming in the pool at the Hard Rock Hotel and Casino. (Compl. 2:25-28, ECF No. 1-1). Plaintiff claims that Defendant HRHH Hotel/Casino, LLC (“HRHH”) was negligent in its operation and maintenance of the pool, which directly led to Plaintiff’s injuries. (*Id.* at

1 3:1-16). This case was originally filed in Clark County District Court on September 9,
2 2013. (*Id.* at 1). On November 26, 2013, Defendant removed the case, citing this Court's
3 diversity jurisdiction pursuant to 28 U.S.C. § 1332. (Pet. for Rem. 3:18-21, ECF No. 1).

4 Based on the allegations in the Complaint, Plaintiff seeks to recover general
5 damages and special damages, each in excess of \$10,000, as well as unspecified amounts
6 for medical care, loss of life enjoyment, and attorneys' fees. (Compl. 4:7-20).

7 **II. LEGAL STANDARD**

8 "If at any time before final judgment it appears that the district court lacks subject
9 matter jurisdiction, the case shall be remanded." 28 U.S.C. § 1447(c). Removal statutes
10 are strictly construed against removal jurisdiction. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566
11 (9th Cir. 1992). "Federal jurisdiction must be rejected if there is any doubt as to the right
12 of removal in the first instance." *Id.* (citing *Libhart v. Santa Monica Dairy Co.*, 592 F.2d
13 1062, 1064 (9th Cir. 1979)). "Where it is not facially evident from the complaint that
14 more than \$75,000 is in controversy, the removing party must prove, by a preponderance
15 of the evidence, that the amount in controversy meets the jurisdictional threshold."

16 *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003).

17 **III. ANALYSIS**

18 This Court has original jurisdiction over all civil actions in which the amount in
19 controversy: (1) exceeds the sum or value of \$75,000; and (2) is between citizens of
20 different states. 28 U.S.C. § 1332(a). As discussed *infra*, Defendant fails to establish that
21 the amount in controversy exceeds \$75,000, and therefore the Court will remand this
22 action.

23 In its Response, Defendant asserts that this case satisfies the amount in
24 controversy requirement because Plaintiff: (a) seeks medical costs in excess of
25 \$32,516.55 and (b) may request damages for future loss of wages. The Court will

1 address each of these arguments in turn.

2 **a. Medical Costs**

3 Defendant claims that Plaintiff is seeking at least \$32,516.55 in medical costs.
4 Indeed, Plaintiff's initial computation of damages directly states that Plaintiff has
5 incurred \$32,516.55 in medical expenses due to the incident at issue. (Pl.'s Initial
6 Disclosures 5:8-14, ECF No. 38-1). Therefore the Court finds that Defendant has
7 sufficiently demonstrated that Plaintiff is seeking at least \$32,516.55.

8 **b. Future Loss of Wages**

9 When asked during his deposition whether he will seek recovery for future lost
10 wages, Plaintiff responded, "Possibly . . . who knows what the future holds?" (Dep. Of
11 Pl. 17:7-11, ECF No. 38-3). Plaintiff then speculated that his "symptoms could get worse
12 or come back." (*Id.* at 17:14-15). Based on these statements, Defendant indicates that it
13 expects Plaintiff to seek recovery for future loss of wages and bring the total amount in
14 controversy over \$75,000.

15 However, there is no evidence on the record to indicate what amount Plaintiff
16 might seek to recover if his symptoms return. Furthermore, Defendant has provided no
17 evidence to show that there is any likelihood that Plaintiff will suffer a relapse. Thus, the
18 Court finds that Defendant has failed to sufficiently demonstrate that it is likely that
19 Plaintiff will seek damages for future lost wages in this case.

20 Therefore the evidence put forward by Defendant demonstrates only that Plaintiff
21 is seeking \$32,516.55—far below the \$75,000 minimum required for diversity
22 jurisdiction. Accordingly, the Court will remand this case.¹

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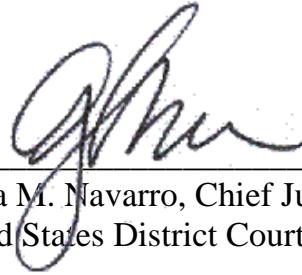
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25 ¹ Because Defendant has failed to carry its burden as to the amount in controversy, the Court need not
determine whether complete diversity exists between Plaintiff and Defendant.

1 **IV. CONCLUSION**

2 **IT IS HEREBY ORDERED** that that this action is remanded to Clark County
3 District Court. The Clerk is instructed to close the case.

4 **DATED** this 21st day of November, 2014.



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7 Gloria M. Navarro, Chief Judge
8 United States District Court
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